

Judicial Election Results

Following is a tabulation by county of the results of the March 5 judicial elections around the state. In all, 47 positions were in contention. Ten judges retained their seats, 13 new judges were elected (12 of them filled seats open due to retirement), and 24 races require runoff elections, to be held in November.

COUNTY	INCUMBENT	WINNER OR RUNOFF CANDIDATES			
Alameda	Judith Ford (Ret.)	Lise Pearlman Trina T. Stanley (C)		Donald S. MacIntyre (Ret.)	Vickie Bridgeman Kelly MacEachern
Alpine	David L. DeVore (retained seat)			Robert D. Monarch (Ret.)	David Brent Glenda Sanders
Contra Costa	Walter Rogers (Ret.)	Joel Golub (C) Cheryl Mills	Riverside	Richard V. Frank (Ret.)	Roger A. Luebs
El Dorado	Gregory F. Haas (Ret.)	Sean O'Brien Daniel B. Proud	Sacramento	Joe S. Gray (retained seat)	
	Patrick J. Riley (Ret.)	Mary T. Muse Douglas C. Phimister	San Bernardino	Louis O. Glazier (Ret.)	Michael Libutti
	Thomas A. Smith (Ret.)	David C. Becker James R. Wagoner	San Diego	Roberta McPeters (retained seat) Roy B. Cazares (Ret.)	Michael Smyth Geary Cortes (I) Richard Whitney
Fresno	James Aaron (Ret.)	Marc N. Kapetan James R. Oppliger (DA)		Michael B. Harris (Ret.) Elizabeth Riggs (Ret.)	Daniel B. Goldstein Peter Gallagher (DA)
	Vincent McGraw	Jon N. Kapetan		Raymond F. Zvetina (Ret.)	Jeffrey Bostwick (C)
	Dennis R. Scott (Ret.)	Peter N. Kapetan John F. Vogt	San Francisco	Joseph Desmond (Ret.) Douglas Munson (Ret.)	Nancy Davis (C) Sean Connolly Gail Dekreon
Inyo	Patrick Canfield (Ret.)	Brian Lamb Peter Tracy	San Luis Obispo	James D. Ream (Ret.)	Jacqueline Frederick John Trice
Los Angeles	Floyd Baxter (retained seat) Reginald Dunn (Ret.)	John C. Gutierrez Richard F. Walmark (DA)	San Mateo	Joseph E. Bergeron (retained seat)	
	David B. Finkel (Ret.)	Paul A. Bacigalupo David Gelfound (DA)	Santa Barbara	William L. Gordon (Ret.)	Brian Hill (DA) Colleen Sterne
	Michael Kanner (Ret.) Michael Pirosh (Ret.)	Lauren W. Bernstein (DA) Joseph Deering Hank Goldberg (DA)	Santa Clara	Diana R. Hall (retained seat) Frank Cliff (Ret.)	Arthur Bocanegra George Chadwick (DA)
	C. Robert Simpson, Jr. (retained seat) Richard E. Spann (Ret.)	Richard Naranjo (DDA) Craig Renetzky		Leon Fox, Jr. (Ret.)	Aaron Persky (DDA) Ron Del Pozzo (DDA)
Mariposa	Carlos LaRoche (Ret.)	Wayne Parrish	Stanislaus	Edward M. Lacy, Jr. (Ret.)	Alan Cassidy Linda McFadden
Mendocino	Jonathan M. Lehan (retained seat)		Trinity	John Letton (Ret.)	Jeannette Palla James Woodward
Monterey	Kay T. Kingsley (retained seat) José A. Velasquez	Marc del Piero José A. Velasquez (I)	Tulare	Glade Roper (retained seat)	
	Michael J. Beecher (Ret.) Daniel Brice (Ret.)	Kimberly Menninger Lance Jensen	Yuba	James F. Dawson (Ret.)	Kathleen O'Connor

(Ret.) = Retired; (C) = Commissioner; (DA) = District Attorney; (DDA) = Deputy District Attorney; (I) = Incumbent

Source: California Judges Association

Managing Litigation

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role not only at the end of the case to determine the merits, but from the beginning to shape discovery. It's a relatively narrow funnel from beginning to end, and the judge is watching most of the time. The point is to get the parties in an open court to refine issues and argue about burdens and evidence. If this occurs, a meet-and-confer dispute, which today takes 45 days and consists of three to five vituperative letters, can be resolved in 10 minutes in open court with enforced civility.

Better, the issues will have been mostly addressed at a conference with the court before discovery is served. This is because the new rules require a meet-and-confer, which includes discussion of discovery issues, before the case management conference. Although state judges have less flexibility than their federal counterparts in proactively dealing with discovery disputes, they can be influential, because the motions on scope and burden will ultimately come their way.

With true case management, the court structures the pretrial activity, focusing on managing the discovery and motions. The parties need to ascertain whether

a trial will be necessary and, if so, identify the triable issues. Focusing pretrial activities allows the parties to reach trial or other disposition sooner and with less expense. This, in turn, concentrates counsel's attention on the merits of the case and encourages settlements based on those merits—that is, on the likely outcome at trial—as opposed to the cost of doing the legal business. Discovery then informs the next stages of management.

The old litigation management model assumes a linear progression of a case from complaint to discovery (first facts, then expert discovery), motions, settlement efforts, trial, and so on; all these steps are regulated by a series of consecutively applicable rules. But these activities actually run in parallel—settlement discussions, trial preparation, discovery, and motions all happen (or should happen) simultaneously. In the abstract, at least, no minimum discovery is needed for disposition; there is no date that is too early for any type of disposition; and it is not always necessary to hold off on expert examination until the end of fact discovery. There is nothing sacrosanct about the timing of any of the events except trial, and trial doesn't matter in the overwhelming majority of cases. In fact, the process may end at

any time, and each step must be managed to allow for prompt termination of the case by settlement or summary judgment. This approach is recognized in procedures such as alternative dispute resolution and early informal discovery. Often these devices are still considered only useful adjuncts to the ultimate cauldron of trial, not as central mechanisms of the process. The new rules encourage and allow judges to flexibly manage their cases.

RESOURCES AND DIRECTIONS

Judicial resources are increasingly scarce. During the 10-year period from 1990 to 2000, even though the number of judicial positions increased, the number of filings and dispositions per judicial position decreased. In the first half of the 1990s, there were more general civil dispositions than filings, but since 1995 it has been the other way around, with the dangerous gap between dispositions and filings growing larger. As we put more resources into the fray, and as the number of civil filings goes down, the number of unresolved general civil cases is rising. Obviously cases are growing in complexity, although we cannot immediately determine whether this stems from developments in the substantive law or from the traditionally rule-bound bureaucratization

of the process—or both.

Proactive case management will shape the case and anticipate disputes before they explode into expensive and time-consuming endeavors. Judges and lawyers will forgo months of briefing and hours of hearings in favor of case management hearings that actually manage the case. A single assignment judge will invest pretrial time—ininitely more important than trial time in the vast majority of cases—for the rewards of rapid disposition. Consider that in the time consumed by a five-day trial, a judge could conduct about 70 half-hour case management conferences. If 2 of those 70 cases resolved early as a result, the judicial time would have been worth the candle.

Judicial efficiencies often correlate with the management styles of the judges, without much regard for the size of the docket or the number of judges in the court. Efficiencies also correlate with judges' being directly responsible for their cases and exercising *judicial control* over them. In actively managed cases, the legal system does not become trouble free, but judges and lawyers are both focused on the same pretrial phase and have similar incentives to make it work. The new rules of court will support that effort. ■



Curtis E.A.
Karnow

Curtis E.A. Karnow, a partner with the law firm of Sonnenschein Nath & Rosenthal, is a member of the Judicial Council's Civil and Small Claims Advisory Committee and Case Management Subcommittee.

Survey Focuses on Repeat Jurors

First-time jurors sometimes make judgments before all the evidence is introduced, but those who have previously served as jurors tend to keep a more open mind until all the facts are in, according to the published results of a recent nationwide survey of jurors.

The fourth annual Juror Outlook Survey was conducted by the *National Law Journal* and Decision Quest, a national jury consulting firm. Researchers questioned 1,007 people eligible for jury service between October 15 and October 29, 2001. The results of the survey included the following:

- ▶ Sixty-three percent of those surveyed had been called to jury duty, and 24 percent had actually served in a jury trial.

- ▶ People in California, Oregon, and Washington were most likely to have previously served on a jury, whereas those in Alabama, Kentucky, Mississippi, and Tennessee had the lowest rates of service.

- ▶ Presented with the statement that a defendant's not taking the stand in his or her own defense meant the person had something to hide, ex-jurors were more likely to disagree.

- ▶ Of those who had served on juries, 82 percent believed the judge had done a good job, 13 percent said the judge had done okay, and only 2 percent said the judge could have done much better.

- ▶ Of those people who had served in a jury trial, 45 percent felt the lawyers had done a good job getting to the point and not wasting time, 28 percent said the lawyers had done an okay job, and 22 percent stated the attorneys could have done much better.

- ▶ By a 3-to-1 margin, individuals who had served on jury trials in which graphic exhibits were used said the exhibits had helped them understand the case.

Source: National Law Journal

The Jury Is In: Courts Improving Juror Procedures

BLAINE CORREN

The appointment of the Blue Ribbon Commission on Jury System Improvement in 1995 represented the first time in recent history that the Judicial Council had undertaken a comprehensive review of the jury system. The commission's 100-page report, submitted to the council in May 1996, included numerous legislative proposals and other recommendations to make life easier for those summoned to jury service.

What's Been Done

ONE-DAY OR ONE-TRIAL

The most dramatic change in jury service is statewide implementation of the one-day or one-trial system. In May 1999, following the commission's recommendation and the enactment of Senate Bill 1947 (Lockyer), the Judicial Council adopted rule 861, which ensures that a person summoned for jury duty need appear for only one day unless he or she is selected for a trial; if not chosen for a trial or assigned to jury selection on the first day of service, the person has satisfied his or her obligation for at least one year.

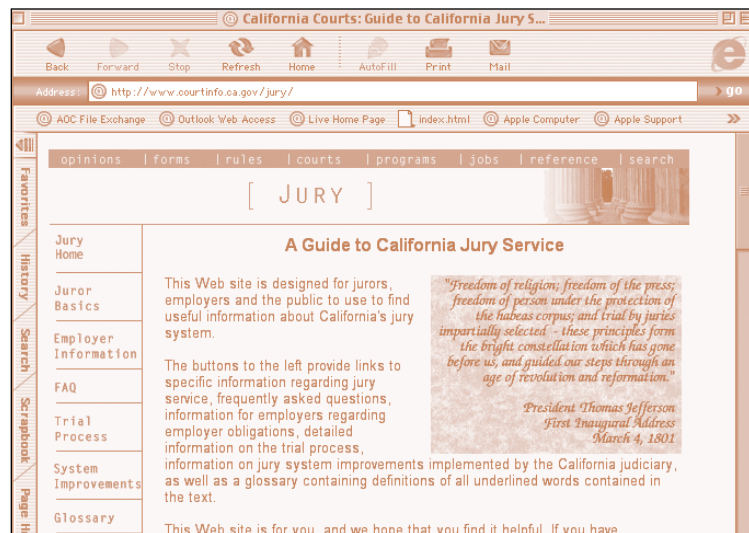
While most courts met the council's January 2001 deadline for switching to the one-day or one-trial system, statewide implementation (with the exception of Alpine County) became a reality only recently. In May the Superior Court of Los Angeles County joined California's 56 other counties that have fully implemented the one-day or one-trial system in all of their courthouses. Los Angeles County faced a unique and significant challenge because of the enormous size of its trial court system and the number of potential jurors it must summon to its courthouses every day. The changeover was complete when new jurors reported on May 20 to the Los Angeles County Courthouse and the Clara Shortridge Foltz Criminal Justice Center, the last two court locations to switch to the one-day or one-trial procedure.

JUROR PAY RAISE

Thanks to legislation sponsored by the Judicial Council, in July 2000 jurors began receiving \$15 per day starting on the second day of service. Although this wage does not fully compensate jurors for their time, it represented the first increase in 43 years (the previous rate was \$5 per day) and the first step toward the council's goal of increasing juror pay to \$40 per day.

In addition to pursuing a per diem raise for juror service, the council is seeking to improve the way jurors are reimbursed for travel to the court. Although jurors no longer get paid for the first day of service (pursuant to the legislation that increased the per diem rate to \$15), courts are still required by statute to compensate them 15 cents per mile for their transportation expenses on that first day. Jurors who report for only one day have often expressed concern about the issuance of a check for such a small amount of money.

The council is supporting legislation to remedy this situation. Assembly Bill 295 (Migden), if signed into law as amended on April 18, would eliminate mileage reimbursement for the first day of jury service but would increase the reimbursement rate for the second and subsequent days to 34 cents per mile. The legislation is currently in committee hearings.



California's juror Web site (www.courtinfo.ca.gov/jury/) provides visitors with information on jury service and the trial process, answers to frequently asked questions, information for employers, and a glossary of terms.



The Superior Court of Ventura County's Juror Business Center gives potential jurors access to workstations, data ports, a fax machine, and a copier. Photo: Courtesy of the Superior Court of Ventura County

NEW JURY INSTRUCTIONS

Based on the Blue Ribbon Commission's recommendations, the council created the statewide Task Force on Jury Instructions. The task force's charge is to draft civil and criminal jury instructions that accurately state the law in plain language, making it easier for jurors to understand the law.

"The task force was charged with coming up with instructions that were more easily understood but remained legally accurate," said Justice James D. Ward in May 2000, after the release for public comment of the first portion of revised civil instructions. Justice Ward, who sits on the Court of Appeal, Fourth Appellate District, and is vice-chair of the Task Force on Jury Instructions, added that "the law is full of complexity and is almost a language in and of itself."

The task force expects to publish a full set of proposed civil jury instructions by 2003. After addressing instructions for civil cases, it will tackle those for criminal cases.

CALIFORNIA JURY WEB SITE

In May 2000 the Administrative Office of the Courts (AOC) launched a Web site for California jurors. The site, found at www.courtinfo.ca.gov/jury/, provides answers to frequently asked questions, information about jury service and the trial process, information for employers, and a glossary of terms.

Work in Progress

One of the recommendations of the blue ribbon commission was to create a task force that would oversee implementation of jury system improvements. Following that suggestion, the council created the Task Force on Jury System Improvements, comprising judges, lawyers, court administrators, and representatives from community groups. The task force provides guidance to the council on a wide range of jury reforms.

ORIENTATION VIDEO

In April the task force unveiled its newest tool to improve jury service—a juror orientation video. The 14-minute video, *Ideals Made Real: The Jury*, was developed in response to numerous requests from court executives and jury managers. It was previewed at the Jury Education and Management Forum last fall and elicited an overwhelmingly positive response from presiding judges and court executives at the California Judicial Administration Conference in January.

The video was designed for viewing in jury assembly rooms. It provides an overview of the juror experience, including interviews with former jurors. The AOC distributed the video to the courts along with supporting materials (booklets, bookmarks, and pens) for use during Juror Appreciation Week.

Visitors to the California courts' secure Web site at <http://serranus.courtinfo.ca.gov/reference/> can view the video and obtain related materials, such as a companion brochure, fact sheets on the video and the jury system, a speech template that can be modified to accompany presentations of the video to schools and community groups, and talking points for jury managers and other presenters when introducing the video.

